IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.192 OF 2006
WITH
CIVIL APPLICATION NO.269 OF 2006
ALONGWITH
APPEAL FROM ORDER NO.193 OF 2006
WITH
CIVIL APPLICATION NO.270 OF 2006

Garware Club House. ..Appellants.

V/s.

Jagdish Maneklal Mehta & Ors. ..Respondents.
(Orig.Plaintiff
Nos.1 to 3)

And

Dharamsi Morarji Chemicals & Ors. ..Respondents.
(Orig.Defendant
Nos.2 to 4)

ALONGWITH

APPEAL FROM ORDER ST.NO.8402 OF 2006
WITH
CIVIL APPLICATION ST.NO.8407 OF 2006

Dharamsi Morarji Chemicals Ltd. & Anr. ..Appellants.
(Orig.Defendant
Nos.2 and 3)

V/s.

Jagdish Maneklal Mehta & Ors. ..Respondents.
(Orig.Plaintiff
Nos.1 to 3)

And

Garware Club House & Anr. ..Respondents.
(Orig.Defendant
Nos.1 & 4)

Mr.Ravi Kadam, Sr.Counsel with C.D.Mehta & V. Dhond i/b. M/s.Dhruve Liladhar & Co. for appellants.

Mr.H.J. Thakkar, Sr.Counsel i/b. M/s.Bhaishankar

Kanga and Girdharilal for respondent Nos.1 to 3.

Mr.M.R.Phal for respondent Nos.4 and 5.

Mr.Vikas Warerkar i/b.Warerkar & Warerkar for respondent No.6.

CORAM: A.M.KHANWILKAR,J

DATE : JULY 3, 2006.

JUDGMENT :

1. Heard counsel for the parties. Admit. Counsel for the Respondents in the respective appeals waive service. Matter is heard finally in terms of order dated March 21, 2006. All parties have agreed for final disposal of the appeals in view of the urgency. Perused the pleadings and relevant documents on record.

2. These appeals can be disposed of by a common Judgment as the same are directed against the common Judgment passed by the Trial Court on the two separate Notice of Motions filed by the respondents/plaintiffs in the same suit. These appeals are directed against the Judgment and order passed by the City Civil Court, Mumbai dated February 22, 2006 on Notice of Motion No.4439 of 2005 and Notice of Motion No.152 of 2006. Both the motions are filed by the respondents/plaintiffs in S.C.Suit No.5154 of 2005.

3. Briefly stated, it is the case of the Plaintiffs that the plaintiff No.1 was admitted as Founder Member of the Appellant No.1/defendant No.1 club on the recommendation of defendant No.3 club. Defendant No.3 club is a member of Defendant No.4 Association. As per Article 5(h) of the Articles of Association of Defendant No.1 Club, the Member Clubs were entitled to recommend six persons to be the members of the Club House. Article No.5(h) is to be read with Clause (b) and (c) of the Resolution recorded in the Preamble of the Regulations formulated for management of the Defendant No.1, which was governed by Regulation adopted originally in August, 1971 subsequently amended on 12th September, 1973 and further amended on 18th September, 1974. As per the regulations of the Defendant No.1, as it prevailed at the relevant time when the plaintiff No.1 was admitted as a founder member, it provided that the clubs affiliated to defendant No.4 prior to 30th September, 1968 shall recommend only six persons to be members of the defendant No.1 club House. It further provided that clubs affiliated thereafter, but prior to 28th October, 1971 shall recommend only two persons to be the members of the club house. Clause (c) of the

Resolution as adopted further provided that out of six names recommended by the clubs affiliated to defendant No.4 Association prior to September 30, 1968, three persons shall be recommended as "founder members" who shall pay entrance fee in full and that the other three persons may pay the entrance fee in suitable instalments within a period of twelve months. It is then provided that two persons recommended by the clubs after 30th September, 1968 but prior to 28th October, 1971 shall pay entrance fee in full.

4. In so far as the Plaintiff No.1 is concerned, he was admitted as member on the recommendation of defendant No.3 club sometime in August, 1973. Since then the plaintiff No.1 has been enjoying the status of "founder member" of the defendant No.1 club. The defendant No.1 club was subsequently registered as a Company under the provisions of the Companies Act. Certificate of incorporation issued in favour of the defendant No.1 club as Company by the registrar of Company under section 25 of the Companies Act is dated 6th April, 1993. The Memorandum of Association of defendant No.1 as adopted, in particular clause III, subclause A-1, which is relevant for our purpose would read thus:

> "To acquire, and take over as a going concern the effects, assets and liabilities of the present unincorporated Club known as B.C.A. Garware Club House at Wankhede Stadium, D-Road, Churchgate, Bombay -400 020, including its outstanding debts if any and to accept and enroll its present members of all categories as its members, and to run and manage the said B.C.A.Garware Club House with its applicable resolutions and resolutions effective immediately prior to the incorporation of the Company with the same effect and applicability as hitherto." (emphasis supplied)

It is thus seen that the defendant No.1, as a consequence to its registration as Company under the provisions of Companies Act, accepted and enrolled the members of the former club house of all categories as its members and to run and manage the B.C.A.Garware Club House with its applicable Resolutions and resolutions effective immediately prior to incorporation of the Company with the same effect and applicability as is referred in the Memorandum of Association and its Articles of Association. So far as the Articles of Association of the defendant No.1 Club after registered as Company under the provisions of Companies Act, it provides similar provision as was in existence in earlier point of time regarding six nominees of the clubs affiliated to Bombay Cricket Association prior to 30th September, 1968 and two nominees of the clubs

affiliated to the Bombay Cricket Association after 30th September, 1968 and prior to 28th October, 1971 admitted to the membership on the recommendation of the respective clubs to be enrolled as Founder Members(see Article 14). Suffice it to observe that since the date of admission of the plaintiff No.1 as founder Member of the Defendant No.1 club he was availing all the facilities and privileges as member of the defendant No.1 club. As the plaintiff No.1 was member of defendant No.1 club for more than 8 years as per the regulations governing eligibility of sons and daughters of such members on payment of 50% of the entrance fee for ordinary member, application for enrollment of plaintiff Nos. 2 and 3 to be admitted as members of the defendant No.1 club was made. The said applications were duly entertained and scrutinized by the defendant No.1 club. By communication dated 30th March, 2000, the plaintiff Nos. 2 and 3 were duly informed that their applications for enrollment as member and allotment of membership of the club has been scrutinised and found to be eligible for enrollment as Ordinary member. However, their names were to be processed for allotment of membership subject to availability of vacancy. Till such time, their names were to be treated as permanent wait list, which entitled the

plaintiff Nos. 2 and 3 to utilise the Club house facility pending allotment of membership. The plaintiff Nos. 2 and 3 were also called upon to make payment of Rs.1200/- as their annual subscription so that their family members could also avail the facilities of the club house. Accordingly, the plaintiff Nos. 2 and 3 paid annual subscription as also the amount of Rs.16,250/- for each of the said plaintiffs towards advance deposit as Permanent wait list members, to be adjusted against the allotment of regular ordinary membership, out of the total amount of entrance fee Rs.66,000/-. In other words, the Plaintiff Nos. 2 and 3 came to be enrolled on the list of permanent wait list members and allowed to enjoy facilities of Club House since year 2000. In August, 2005, plaintiffs were given to understand that the plaintiff Nos. 2 and 3 were not entitled to use the Club House facilities as their names have been wrongly included in the permanent wait list maintained by the Club House on erroneous assumption that the sons and daughters of the "Founder Members" are also eligible for being taken as Ordinary Members of Club. It appears that the Club took a policy decision that the sons and daughters of the "Founder Members" were not eligible for such admission as ordinary members. Communication in this behalf dated

July 27, 2005 was received by plaintiff Nos. 2 and 3, which mentions that as per the Articles of Club House the sons/daughters of the founder members are not eligible for ordinary membership under membership of son and daughter category. Therefore, wait list numbers allotted to plaintiff Nos. 2 and 3 were cancelled with immediate effect. The plaintiff Nos. 2 and 3 were also called upon to surrender their identity cards issued to them as well as their family members by the Club House under the respective wait list number. By the said communication, the defendant No.1 returned the cheques to the respective plaintiff Nos.2 and 3 towards refund of advance entrance fee paid by them as wait list candidates. Plaintiff No.1 immediately raised issue with the defendant No.1 by sending a detailed communication dated September 19, 2005 and called upon the defendant No.1 to provide certain information referred to in the said communication. The plaintiff No.1 called upon the defendant No.1 to place the issue before the Annual General Meeting of the Club, which was scheduled to be held on 30th September, 2005. According to the plaintiff No.1, the issue ordinarily ought to have been discussed in the General Body. However, the same was not allowed to proceed on the basis of incorrect representation made

by Mr. Ravi Ganguli, Vice President of defendant No.1. Be that as it may, subsequently even the membership of plaintiff No.1 came to be recalled. This has happened purportedly at the instance of defendant No.3 club, who in turn informed the defendant No.1 by communication dated 11th November, 2005 mentioning that they were withdrawing the names of four nominated members sent at their instance, who were enrolled as Founder Members of the defendant No.1 club. The name of plaintiff No.1 is mentioned in this communication, Acting on this communication, defendant No.1 in its Managing Committee Meeting held on 14th November, 2005 at 5.30 p.m., deliberated on the subject vide Agenda Item No.2 and recorded that defendant No.3 has withdrawn nomination of four founder members of defendant No.1. Accordingly, it was unanimously resolved to withdraw the nomination of the said four founder members and called upon them to settle the outstanding dues. Communication in this behalf was sent to the plaintiff No.1 on 20th December, 2005. In the light of the above developments the plaintiffs rushed to the City Civil Court, Bombay by way of S.C. Suit No.5154 of 2005 on November 28, 2005 for declaration that the decision of the defendant No.2 dated 27th October, 2005 Exh.J and also decision dated 14th November, 2005 Exh.L and

decision dated 27th July, 2005 of defendant No.1 Exh. D and C and decision of defendant No.3 at Exh. A are bad, illegal and contrary to the Association, malafide and are liable to be set aside. During the pendency of this suit the plaintiff took out Notice of Motion No.4439 of 2005 for the following relief:

> "Pending the hearing and final disposal of the suit, the Defendants, their servants and agents be restrained by an order and injunction of this Hon'ble Court from acting upon or implementing the said decision dated 27th October, 2005 at Exh.J and the said decisions dated 27th July, 2005 at Exh. B and C respectively."

At the relevant time the decision of removing the plaintiff No.1 was not communicated, however, at the hearing of this Notice of Motion, as the counsel appearing for defendant No.1 informed the court that communication has already been sent to plaintiff No.1 recording the decision taken by the Managing Committee in its meeting held on 14th November, 2005, the plaintiffs were required to amend the pleadings and ask for further reliefs in that context. The plaintiffs accordingly, amended the pleadings and asked for further reliefs. The amended reliefs claimed by the plaintiffs are as follows:

> "The Plaintiffs therefore pray:-
>
> (a) it may be declared that the decision

dated 27th October 2005 of the Defendant No.2 at Exhibit "J" and also decision dated 14th November, 2005 at Exhibit "L" and the decisions dated 27th July 2005 of the Defendant No.1 at Exhibits "B" and "C", and the decision of the defendant No.3 at Exhibit ‘K’ are bad, illegal, contrary to the articles of association, motivated, discriminatory malafide and are liable to be set aside;

(ai) it may be declared that the actions of the defendant No.3 by letters dated 11th November 2005 and 30th November 2005 at Exhibit "K" and "M" respectively are bad and illegal and the same be set aside.

(aii) it may be declared that the actions of the 1st defendant by its letter dated 20th December 2005 at Exhibit -"N" and by its meeting dated 16th December 2005 referred to therein are bad and illegal and the same be set aside.

(b) pending the hearing and final disposal of the suit, the Defendants, their servants and agents be restrained by an order and injunction of this Hon’ble Court from acting upon or implementing the said decision dated 27th October 2005 at Exhibit "J" and also decision dated 14th November, 2005 at Exhibit "L" and the said decision dated 27th July 2005 at Exhibits "B" and "C" and the decision on the defendant No.3 at Exhibit ‘K’ are respectively.

(bi) that pending the hearing and final disposal of the suit, the Defendant No.3 its servants and agents be restrained by an order and injunction of this Hon’ble Court from acting upon or implementing their actions by their letter dated 11th November, 2005 and 30th November 2005 at Exhibit -"K" and "M" hereto respectively.

(bii) that pending the hearing and final disposal of the suit, the Defendant No.1 its servants and agents be restrained by an order and injunction of this Hon’ble Court from acting upon or implementing their actions by their dated 20th December 2005 at Exhibit

> -"N" and by its said meeting dated 18th December 2005 referred to therein.
>
> (c) for ad interim reliefs in terms of prayer (b) above.
>
> (d) for such further and other reliefs as the circumstances of the case may require.
>
> (e) for costs of this suit."

The plaintiffs also took out additional notice of motion being Notice of Motion No.152 of 2006 and asked for further interim relief as follows:

> "a) Pending the hearing and final disposal of the Suit, the Defendants, their servants and agents by themselves or through someone else be restrained by an order and injunction of this Hon'ble Court from acting upon, implementing or doing any further acts or omissions in pursuance or furtherance of the following decision/actions.
>
> (i) decision of the 1st Defendant contained in the minutes of the urgent meeting of the managing committee held on 14th November, 2005 at Exhibit "L" to the Plaint;
>
> (ii) Actions of the Defendant No.3 by their letter dated 11th November 2005 and 30th November 2005 at Exhibits "K" and "M" respectively to the Plaint;
>
> (iii) Decisions of the 1st Defendant by its letter dated 20th December 2005 at Exhibit "N" to the Plaint and by its meeting dated 16th December 2005 referred to therein and thereby or otherwise preventing the Plaintiffs from availing of the facilities of the Club House of the 1st Defendants.
>
> b) That ad-interim injunction in terms of prayers (a) and (b) above be granted.
>
> c) For costs of this Notice of Motion;

and

d) For such other and further as this Honourable Court may grant in the circumstances of the case."

5. The parties exchanged pleadings before the lower Court. On the basis of material on record, the lower Court by the impugned Judgment and order dated 22nd February, 2006 disposed of both the Notice of Motions preferred by the plaintiffs. Both the Notice of Motions have been made absolute by the Lower Court. The reasons, which have weighed with the lower Court to record opinion in favour of the plaintiffs can be discerned from paragraph-33 onwards of the impugned Judgment. The appellant/ original defendant No.1 has questioned the correctness of the view taken by the trial Court in the impugned Judgment by filing two separate appeals being Appeal from order No.193 of 2006, which is directed against the order passed on Notice of Motion No.4439 of 2005; and Appeal From Order No.192 of 2006, which is directed against the order passed on Notice of Motion No.152 of 2006. The third Appeal being Appeal from Order No.... of 2006(arising from Appeal From Order St.No.8402 of 2006) is filed by Defendant Nos. 2 and 3 against the order passed on Notice of Motion No.152 of 2006. Ordinarily, I would have adverted to the

findings recorded by the trial Court in the impugned Judgment to consider whether the view so taken by the court below is appropriate and can be sustained. However, in the present case, it is noticed that the Judgment of the lower Court is of no assistance. Ordinarily, in such a situation I would have set aside the impugned Judgment and order and relegated the parties before the lower court for reconsideration of the entire matter afresh. However, the counsel appearing for both the parties before this Court insisted that this court may consider the entire matter afresh on merits instead of relegating the parties before the lower Court, which will delay the matter further. In the circumstances, it has become necessary for me to advert to the relevant aspects of the matter and to record the findings afresh on merits.

6. The first question that needs to be addressed on the basis of pleadings of the parties is what is the status of the plaintiff No.1. According to the plaintiffs, though the Plaintiff No.1 is a "founder member", it is not open to withdraw his candidature, save and except, the conditions specified in the Articles of Association, of the Defendant No.1 Club, by which the parties are governed. It is contended

on behalf of the plaintiffs that the plaintiff No.1 could be removed as "founder Member" on the ground of non-payment of dues in terms of Article 22 or if were to resign in terms of article 23 or he would cease to be member of the club in terms of Article 24. In absence of any of the situations covered by abovesaid clauses, contends plaintiff No.1, the club was not authorised to withdraw the nomination of the plaintiff No.1, assuming that it is a case of nomination and not recommendation. In the first place the plaintiffs contend that as per the original regulation by which the club and the plaintiff was bound it only permitted "recommendation" of persons to be admitted as founder Member, in terms of the resolution noted in the Preamble of the regulation of 1974 r/w clause 5(h) thereof. There was no provision for "nomination" of persons to be admitted as founder member. Even the new Articles of Association after the defendant No.1 has been incorporated as Company, it has not changed that position. So far as Articles of Association, which have come into force after April, 1993, Article 14 thereof deals with the Founder Members. There is nothing in the Articles to authorise the club affiliated to Bombay Cricket Association who had recommended the name of persons to be enrolled as founder member to withdraw the said

candidature or for that matter defendant No.1 to act on such withdrawal. In as much as, so far as defendant No.1 and plaintiffs are concerned they will be governed by Articles of Association, which is in the nature of contract between the two parties. It is further contended that there are nothing in this Articles of Association to enable the defendant No.1 to remove the name of any Founder Member, merely because the club who had recommended the name of such member has withdrawn the recommendation. On this basis, it is contended that removal of plaintiff No.1 is without authority of law.

7. In so far as the decision concerning plaintiff Nos.2 and 3, it is contended that they have been allotted permanent wait list number in terms of the extant regulation. This regulation not only covers the sons and daughters of the ordinary members but also other category of members. In all there are six categories of members as is noted in Article-8 of the Articles. Founder member is one of such categories. Indeed, Article 16 of the Articles deals with the Ordinary Member, but the same is in two parts. The first part relates to issue of subscription or entrance fee to be paid by person to be admitted as Ordinary member. The later part of

Article 16 provides for sons and daughters of "members" who can get admitted as members on payment of 50% of the entrance fee for ordinary members. In other words, there are two sources, from which persons are admitted as ordinary members. Firstly, who has directly applied for Ordinary Membership and second is the sons and daughters of the existing members. It is therefore, contended that sons and daughters of the "founder members" who are also members within the sweep of expression "membership" defined in Article 8 read with Article 4(e); are entitled to be enrolled as ordinary member subject to the qualification specified in Article 16. Accordingly, there is no basis to deny benefit of this provision to sons and daughters of the "founder members". It is then contended that in fact the applications preferred by the plaintiff Nos. 2 and 3 were duly scrutinized and accepted by the defendant No.1. Defendant No.1, in turn, informed the plaintiff Nos. 2 and 3 in writing that their applications have been scrutinized and they have been found eligible for enrollment as ordinary member, but that formality was to be completed in due course subject to availability of vacancy. In the mean time, the plaintiff Nos. 2 and 3 were allowed to enjoy all the facilities of the club on payment of

annual subscription. Besides, advance of entrance fee payable by plaintiff Nos. 2 and 3 in terms of Article 16 of the Articles, being 50% of the entrance fee for ordinary member, was also demanded from plaintiff Nos.2 and 3 and which amount was offered by them and and accepted by defendant No.1. It is therefore, contended on behalf of the plaintiff Nos. 2 and 3 that it was not open to the defendant No.1 to unilaterally discontinue or remove their names from the permanent wait list member on the erroneous assumption that sons and daughters of the Founder Members were not eligible for being admitted as members of the club on payment of 50% of the entrance fee of ordinary member.

8. According to the appellants original Defendants, however, the claim set up by the plaintiffs either of plaintiff No.1 or plaintiff Nos.2 and 3 is without any basis. It is contended that the plaintiff No.1 is concerned, his case is one of withdrawal of nomination by defendant No.3. The plaintiff No.1 being a nominated member by the defendant No.3 was subject to the pleasure of defendant No.3. The defendant No.3 having decided to withdraw the nomination of plaintiff No.1, the defendant No.1 had no option but to accept the said

request and also allow the defendant No.3 to nominate some other person as founder member as replacement. It is contended that the founder member does not enjoy the same rights and privileges as other members of the club. He can enjoy the facilities of the club subject to the pleasure of the club which has recommended his name. The case of the appellants is that the plaintiff No.1 is a nominee of defendant NO.3 and the name of such nominee can be withdrawn at any stage without any reason and that defendant No.3 having exercised that option, defendant No.1 has no reason not to act upon the said decision of defendant No.3. In so far as the plaintiff No.2 and 3 are concerned, it is the case of the appellant that the extant regulation do not authorise admitting sons and daughters of the founder members of the club. That provision is available only in respect of ordinary members in terms of Article 16 of the Articles.

9. Having considered the rival submissions the first question that requires to be examined is as to what is the status of the plaintiff No.1. From the pleadings and documents on record, I find substance in the stand taken on behalf of the plaintiff No.1 that the original regulations which governed the club house and the plaintiff No.1 provided that the club

affiliated to Bombay Cricket Association can recommend persons to be the members of the club house (defendant No.1). In terms of the resolution which was adopted in 1974 clause (b) and (c) thereof clearly provided that out of six names recommended by the club affiliated to the Bombay Cricket Association prior to 30th September, 1968, three persons shall be "recommended" as founder members who shall pay entrance fee in full and the other three persons so recommended may pay the entrance fee in suitable instalments within a period of 12 months. The said resolution further provided that two persons recommended by the club after 30th September, 1968 but prior to 28th October, 1971 shall pay entrance fee in full. The Preamble of the regulations applicable at the relevant time when Plaintiff No.1 was recommended to be admitted as member and was so admitted reads thus:

"PREAMBLE

> . The Government of Maharashtra has been pleased to lease for a period of 50 years a portion of the land at the Lloyds Recreation Ground to Bombay Cricket Association. All Structures built on this ground shall vest in and shall be the property of the Bombay Cricket Association. In view of this, the Bombay Cricket Association has built a Club House on this land for which the Rules are hereby approved. The following Resolutions, also, are approved

to safeguard the interest of the Clubs affiliated to the Association.

Resolved that-

(a) The Managing Committee of the Bombay Cricket Association shall look after the affairs of the Club House till such time as the Club House Committee is formed.

(b) The Clubs affiliated to the Bombay Cricket Association prior to 30th September, 1968 shall recommend only SIX persons to be the members of the Club House. The Club affiliated thereafter but prior to 28th October, 1971, shall recommend only TWO persons to be the members of the Club House.

(c) Out of the Six names recommended by the Club affiliated to the Bombay Cricket Association prior to 30th September, 1968. THREE persons shall be recommended as Founder Members who shall pay the entrance fee in full and that the other THREE persons may pay the entrance fee in suitable instalment within a period of twelve months. The TWO persons recommended by the Clubs after 30th September, 1968 but prior to 28th October, 1971 shall pay the entrance fee in full." (emphasis supplied)

It is also relevant to quote Articles 2(c), 5, 5(h), 5(i), 7,9, 11,16, 18 and 19 of the same regulations which read thus:

"2. Interpretation:

(c) 'Member' means all categories of members of the Club."

"5. Membership:

. For the purpose of membership, the number of members is limited to 6,000.

. The membership shall consist of:

(a) Hon.Patron-in-chief, (b) Hon.Patron, (c) Hon.Vice Patron, (d) Patrons, (e) Vice-Patrons, (f) Donor Members, (g) Life Members, (h) Founder Members, (i) Ordinary Members, (j) Honorary Members, (k) Casual Members, (l) Special Members, (m) Temporary Members, (n) Members of the Managing Committee of the Bombay Cricket Association."

"5(h) Founder Members:

. A person desirous of becoming a Founder Member in accordance with the Resolutions (b) and (c) of the preamble to the constitution of the Club House Rules shall pay a sum of Rs.300/- as entrance fee and an annual subscription of Rs.50/-. Having been accepted as such he will enjoy all rights and facilities of membership as prescribed in the Bye-laws including the rights of attending and voting at all general meetings of the members of the Club House and shall be eligible in contest elections.

"5(i) Ordinary Members

. (i) A person desirous of becoming an Ordinary Member in accordance with the resolutions (b) and (c) of the preamble to the constitution of the Club House Rules shall pay a sum of Rs.300/- as entrance fee either in lump sum or in twelve instalments and an annual subscription of Rs.50/-. Having been accepted as such he will enjoy all rights and facilities of membership as prescribed in the Bye-laws including the rights of attending and voting at all general meetings of the members of the Club House and shall be eligible to contest elections.

. (ii) A person desirous of becoming an Ordinary Member shall pay a sum of Rs.5,000/- as entrance fee and an annual subscription of Rs.200/-. Having been accepted as such he will enjoy all rights and facilities of

membership as prescribed in the Bye-laws including the rights of attending and voting at all general meetings of the members of the Club House and shall be eligible to contest elections."

"7. Every candidate apply for admission as a member shall be proposed by one and seconded by another member of the Club House. The proposal for membership shall be in writing signed by the candidate and by his proposer and seconder and by at least four other members and shall be in the following form or in such other form as the Committee may from time to time prescribe:"

"9. The Committee may accept or reject an application for membership without assigning any reason therefor. The decision of the Committee shall be final and binding."

"11. Any vacancy of membership arising from the recommendations of the Clubs in accordance with resolution (b) of the preamble to the constitution of the Club House Rules by virtue of demise, resignation or expulsion of such a member shall be filled in by the Club concerned from which such vacancy arises, provided, however, the new member pays the entrance fees for the ordinary membership prevailing then."

"16. A member shall cease to be a member of the Club:-

. (a) On acceptance of his letter of resignation by the Committee and on payment of all dues due by him to the Club.

. (b) It adjudged an insolvent; provided however that where debts are paid in full the Committee may rename such a member on his producing satisfactory proof of his having paid the debts.

. (c) If found guilty of an offence involving usual turpitude.

. (d) If any member refuses or neglects to comply with any provision of the rules or any bye-laws or shall be guilty of

conduct the Committee considers likely to endanger the harmony or interest of the Club, such a member shall be removed from the membership of the Club by a resolution of the Committee. At least 14 days before the meeting at which such a resolution is to be adopted he shall be served with a notice thereof for his removal and before adopting such a resolution he shall have an opportunity to give orally or in writing any explanation in defence he may think fit. It shall be in the powers of the Committee to suspend such a member from the Club till such time such a resolution has either been adopted or rejected. On the resolution being adopted the member shall forthwith cease to be a member of the Club and shall not have any claim against the Committee or the Club. Any fees or subscription paid shall not be refundable.

. (e) A member shall pay all his dues for the month by 20th of the month in which the bill is sent to him. If any member fails to pay his dues including rent and/or compensation in respect of any part of the Club's property in his use or occupation or his subscription or bills to the Club after the same have been duly demanded of him in writing, his name shall be posted on the notice board for a period of 30 days as a defaulter and notice of such posting shall be sent to the member. If at the expiration of 30 days the amount due or any part thereof remains unpaid the member shall cease to be a member of the Club and his name shall be forthwith removed from the register of members. The Committee shall have the powers to take such steps to recover the dues from the member. He may be readmitted without formal re-election if all dues and any subscriptions falling due had he continued to be a member are paid in full. No member who is posted as a defaulter shall be entitled to any of the privileges of membership. However, no defaulter who has been posted thrice shall be readmitted as a member.

. (f) For any action taken by the Committee under Rule 19."

"18. Resignation:

. A member desiring to resign from the membership of the Club shall inform the Secretary of the Club in writing and the Committee may accept the resignation provided no amount whatsoever is due to the Club from the member."

"19. Expulsion Termination or Suspension:

. (a) If it is revealed that a person elected as a member has furnished any incorrect information in the form or application for membership or that the application form for membership is not signed by the candidate personally, the Committee shall cancel his membership and that any amount paid by way of entrance fee subscription game fees shall be forfeited by the Club.

. (b) A member expelled or removed from membership shall forfeit all rights in a claim upon the Club.

. (c) Pending expulsion or removal it shall be in the power of the Committee to suspend such a member from the Club.

. (d) A member expelled under this Rule may on his application made two years after expulsion be re-admitted by the Committee as a new member."(emphasis supplied)

The expression which is employed in clauses (b) and (c) of the resolution as adopted by the club house clearly mentions that the names of the persons were to be recommended by the club affiliated to the Bombay Cricket Association. Question is, whether this recommendation can be said to be nomination so as to authorise the recommending club to withdraw the same at its pleasure. Going by the ordinary words

employed in the regulations of 1974, it is not possible to take the view that it was a case of "nomination" as such. On the other hand, it is seen as per the regulation 1974, the clubs affiliated to Bombay Cricket Association could "recommend" persons desirous of becoming "founder member" in accordance with the Resolution (b) and (c) of the preamble of the Constitution of Club House Rules as well as of becoming "ordinary member" in accordance with the same resolution to the Constitution of Club House rules. It may be noted that the endorsement on the membership application form of the Plaintiff No.1 indicates that the same was scrutinised for being admitted as an "ordinary member". However, I shall proceed to examine the case of the Plaintiff No.1 as having been admitted as a "founder member". In my opinion, it will make no difference having regard to the scope of the regulation as applicable at the relevant time. I shall revert to this aspect a little later. Reverting to the other provisions of the relevant regulations, it provided that the subscription to be paid for both these categories of members either "founder member" or "ordinary member" on the recommendation of the club affiliated to Bombay Cricket Association has been specified therein as Rs.300/- as entrance fee either in lumpsum or in

equal instalments. In so far as "founder member" is concerned, he would be admitted on payment of Rs.300/- as entrance fee and annual subscription of Rs.50/-, whereas the "ordinary member" is concerned he would be admitted on payment of Rs.300/- as entrance fee either in lump sum or in twelve instalments and annual subscription of Rs.50/-. The regulation as applicable in the year 1974 when the plaintiff No.1 was admitted as member, no where provides that the recommendation so made can be withdrawn by the club affiliated to the Bombay Cricket Association or that the Defendant No.1 could remove such person on the basis of such withdrawal of recommendation. On the other hand, on plain reading of Article 11 thereof, it is clear that vacancy of membership in respect of such member would arise on his demise, resignation or expulsion only, which in turn could be filled in by the club concerned. The situation of resignation is provided for in Article 18 and expulsion in Article 19 of the regulation. To put it differently, there is no scope for accepting the argument that the defendant No.3 who had recommended the name of the plaintiff No.1 could have had withdrawn its recommendation, so as to result in removal of the plaintiff No.1 from the membership as founder member of the defendant No.1. That is not

the purport of the provisions of the regulations which were in force in 1974 when the plaintiff No.1 came to be admitted as founder member on the recommendation of defendant No.3.

10. Indeed, the defendant No.1 has been subsequently, incorporated under the provision of the Companies Act. The defendant No.1 on being incorporated as Company has taken over the earlier unincorporated club known as B.C.A.Garware Club House including its outstanding debts as also to accept and enroll its present members of all categories as its member. The memorandum of association clause III(A)(1) clearly provides that the defendant No.1 shall accept and enroll present members of all categories as its members and to run and manage said B.C.A.Garware Club House with its applicable resolutions and resolutions effective immediately prior to the incorporation of the company with the same effect and applicability. It necessarily follows that the status of the plaintiff No.1 as existed at the time when he was admitted as member, albeit on the recommendation of the defendant No.3 would continue to remain the same.

11. We shall now straightway advert to the

relevant provisions in the Article of Association which came into force after incorporation of defendant No.1 as Company under the provisions of Companies Act. The relevant provisions of the said Article of Association read thus:

> "4. Unless otherwise inconsistent with or contrary to the subject or context thereof."
>
> 4(e) "Member" shall mean all categories of members of the "Club"."
>
> "Membership- 8. The Membership of the Club shall be divided into the following categories:
>
> (a) Patrons.
> (b) Vice Patrons.
> (c) Donor Members.
> (d) Founder Members.
> (e) Life Members.
> (f) Ordinary Members."
>
> "Founder Member-14. Six nominees of all the Club affiliated to the Bombay Cricket Association prior to 30th September, 1968 and two nominees of the Clubs affiliated to Bombay Cricket Association after 30th September, 1968 and prior to 28th October, 1971, admitted to the membership on the recommendation of the respective Clubs shall be the Founder Members."
>
> "Ordinary Member:16. Any person may be admitted as an Ordinary Member on payment of an Entrance Fee of Rs.25,000/- or more as may be prescribed by the Managing Committee from time to time . Son and daughter of members may be admitted as members on payment of 50% of the entrance fee for ordinary member as provided that the member concerned has been a member of the club for a minimum period of eight years and further provided that he has not been declared a defaulter for non payment

of club dues at any time in the past."

"19. Acceptance or Rejection of Membership.

(a) The candidature for a Patron, Vice Patron, Donor Member, Founder Member, Life Member, Ordinary Member shall be proposed by one and seconded by another Member both of who shall have been on the rolls of the B.C.A.Garware Club House or Garware Club House as the case may be, for at least five years and shall further be supported by four other members who have been members of B.C.A. Garware Club House or Garware Club House as the case may be, for at least three years. The application form prescribed by the Committee from time to time shall be duly filled in and signed by the candidate, proposer, seconder and the four supporting members and submitted to the Secretary.

(b) If a member from an affiliated Club to the Bombay cricket Association ceases to be a Member of the Club, the vacancy shall be notified by the Club to the Secretary of the Club affiliated to the Bombay Cricket Association which had originally sponsored the Membership and only a person who has been an office bearer or a playing member of the said Club for at least two years and whose candidature is recommended by the Secretary of the said club shall be eligible for admission as a Member to fill in the vacancy subject to the prior approval of the Managing Committee on payment of an entrance fee of the amount equivalent to 30% of the amount or such other amount payable by an Ordinary Member as may be prescribed by the Managing Committee from time to time.

(c) The Managing Committee may accept or reject an application for membership without assigning any reason therefor. The decision of the Managing Committee shall be final and binding. The Managing Committee shall be entitled to reject and/or refuse to grant any membership to any person or body corporate without assigning reasons and the decisions of the Managing Committee shall be final and

binding.

(d) A person whose application for membership is rejected by the Managing Committee shall not be eligible for election as a member until after the expiry of a period of three years from the date of rejection.

(e) A person who has voluntarily resigned from membership and not having any dues payable to the Club on the date of resignation may be re-admitted by the Managing Committee on a fresh proposal and on payment of fresh entrance fee, then prevailing if all the previous liabilities have been fully discharged.

(f) On election, a copy of Memorandum and Articles of Association and Rules made thereunder shall be supplied on payment of the prescribed fee as fixed by "The Companies Act 1956".

"20. Subscription shall be payable in advance by the following classes of Members.

(a) Founder Members shall pay an Annual Subscription of Rs.50/- or such amount as may be increased and/or determined by the Managing Committee from time to time.

(b) Ordinary Members shall pay an Annual Subscription of Rs.200/- or such amount as may be increased and/or determined by the Managing Committee from time to time.

(c) The Managing Committee may, from time to time, enhance, reduce alter or revise the rate of subscription payable by the various classes of members or impose fresh subscription on different classes of members."

21. Rights and Privileges of a Member.

(a) All the Members shall have the right to receive notice of all the General Meetings and to attend and vote at such meetings and to contest all elections.

(b) All members, their wives/husbands, children below the age of twenty one years and unmarried daughters shall be entitled during prescribed hours to be admitted to and have the use of the Club to play games and to all other advantages, facilities and amenities and to introduce guests, subject to such restriction and payment as may be imposed or prescribed by the Managing Committee under the Rules, Regulations and Bye-laws for the time being in force.

22.Removal of Member for non-payment of dues-

A member shall pay all his dues within fifteen days of the posting of the bill. If the member fails to pay his dues, including subscription, bills, fees or any other payments due and owing to the Club within the above period, he shall be sent a reminder by Registered Post A.D. asking him to make full payment within fifteen days. If the member still fails to clear all his dues owing to the Club, his name shall be placed on the Club's Notice Boards as a defaulter for thirty days. This shall be treated as the first default and he shall be informed of the same by a Registered Letter A.D. the cost of which shall be debited to his account. During the period that the member's name is on the Notice Board as a defaulter, all privileges and rights of the member to use the Club shall stand suspended. If at the expiration of thirty days the amount of dues, or any part thereof more than Rs.210/- remains unpaid, the members shall automatically cease to be a member and his name shall be forthwith removed from the Register of Members and he shall not thereafter be entitled to any rights or privileges of a member and shall cease to have access to the Club. For the purpose of implementing this Rule or Article, the dues of the member shall be more than Rs.210/-. The member so removed may be readmitted by the Committee without a formal re-election, if all dues and subscriptions falling due, had he continued to be a member, are paid in full, subject to the payment of readmission fees as may be decided by the Managing

Committee from time to time, but not later than six months from the date of such removal. Notwithstanding anything contained hereinabove, the Managing Committee may readmit a member eventhough he is declared as a defaulter, if the Managing Committee may deem fit and proper after considering the Appeal that may be preferred by such a defaulter member. The decision of the Managing Committee, whether to admit or not, a defaulted member shall be final and binding on such a member.

In addition to the provisions contained hereinabove, the Managing Committee shall also be entitled to consider the Appeal of all such members who are declared a defaulter during the period after 1.6.1990 till the date of registration and on being satisfied with the explanation of such a member, may readmit him in the same category. The Committee shall further have the powers to recover the dues in full from the defaulting members.

23.Resignation

a) A member desiring to resign from the Club shall inform the Secretary in writing, duly acknowledged by the Club.

b) The Committee shall accept the resignation of a member provided that no amount is due by the member resigning and the resignation shall take effect from the date of such acceptance.

24. Cessation.

Membership of any member shall be ceased on any of the following grounds:

a) that the member has been adjudged an undischarged insolvent.

b) that the member has been found guilty by a Court of competent jurisdiction of an offence involving moral turpitude:

> c) that the member is wilfully disobeying and refusing to observe and comply with the Articles, Rules, regulations and bye-laws in force and/or
>
> d) that the member is guilty of conduct which in the opinion of the Committee is prejudicial to interest of the Club and is likely to disrupt or disturb the smooth working and harmony of the Club.
>
> e) A member ceased to be member of the Club House shall not be entitled to claim any refund of fees or subscription paid by him. A member once expelled cannot be considered again at any time nor will be permitted to be introduced as a guest by any member."
> (emphasis supplied)

Article 4(e) specifies the definition of member. It provides that member shall mean all categories of members of the "Club". The term membership has been explained in article 8 which mentions that the Membership of the Club shall be divided into six categories i.e.(a) Patrons, (b) Vice Patrons, (c) Donor Members, (d) Founder Members, (e) Life Members and (f) Ordinary Members. I shall straightway advert to the definition of Founder Member as provided in Article 14. It provides that six Nominees of all the Clubs affiliated to the Bombay Cricket Association prior to 30th September, 1968 and two nominees of the Clubs affiliated to Bombay Cricket Association after 30th September, 1968 and prior to 28th October, 1971, admitted to the membership on the recommendation of

the respective Clubs shall be the Founder Members. Indeed, this Article refers to the expression "Nominees of the Clubs". However, at the end of this clause, provision is for admission to the membership on "recommendation" of the respective Clubs as Founder Members. Having regard to the language of this provision it was vehemently argued that the admission of the plaintiff No.1 was only in the capacity of "nominee" of defendant No.3 and no more. However, what is required to be considered is the provisions which prevailed at the time when the plaintiff No.1 was admitted as member of the Defendant No.1 Club. When he was admitted as a member regulations of 1974 were in force. As per the provisions applicable at the relevant time, as already observed earlier, it is not possible to hold that it was open to the recommending club to withdraw the recommendation and on which basis the Defendant could have proceeded further to cancel or recall the membership of the concerned member. At least the then regulation did not provide for such mechanism. The Defendant No.1 in terms of its Memorandum of Association(clause III.A.1) was to run and manage the club respecting the applicable resolutions and resolutions effective immediately prior to its incorporation qua the members on the roll of B.C.A

Garware Club House. Even the present Articles of Association make no provision authorising the affiliated clubs to withdraw the recommendation made prior to the incorporation of the Defendant No.1 as a Company. The only manner of removal of member provided for can be discerned from Article 22. Article 23 deals with the situation of resignation and Article 24 deals with cessation. Thus understood, the provision contained in Article 19(b) of authorising filling up vacancy by the club affiliated will have to be juxtaposed with vacancy arising on account of the situation specified in Articles 22 to 24. None of the specified situation in those Articles would warrant a case of withdrawal of recommendation.

12. In my opinion, therefore, the plaintiff No.1 has made out a prima facie case that his case was one of "recommendation" by the defendant No.3 to be admitted as member of the Defendant No.1 Club, and not one of "nomination" as such so as to authorise the Defendant No.3 to recall such nomination at its pleasure, as per the Rules and regulations then prevailing.

13. Once this position is accepted, the argument

of the appellants that the defendant No.3 had authority to recall the nomination at any time at its pleasure will have to be negatived. Indeed, the appellant may be justified in relying upon the decision of Delhi High Court, in the case of **Sarla Kaushik V/s. Jagjit Singh Rathor, 99(2002) Delhi Law Times 822(DB), in** particular paragraph Nos. 14, 20 to 24 thereof to contend that the power to nominate would include the power to nominate somebody else in terms of the provisions contained in Sections 16 and 21 of the General Clauses Act. However, in the fact situation of the present case, I have no hesitation in taking the view that it is a case of "recommendation" and not nomination as such. Further, the regulations as applicable and were binding on the Defendant No.1 make no provision to remove the person already admitted because of the purported withdrawal of recommendation by the affiliated Club. The position that the person recommended by the affiliated club to the Bombay Cricket Association to be admitted as Founder Member cannot be recalled at any time is also fortified from the provisions now made in the form of Article 19 clause (b). The same provides that if a member from an affiliated Club to the Bombay Cricket Association ceases to be a Member of the Club(Defendant No.1),

the vacancy shall be notified by the Club to the Secretary of the Club affiliated to the Bombay Cricket Association which had originally sponsored the Membership and only a person who has been an office bearer or a playing member of the said Club for atleast two years and whose candidature is recommended by the Secretary of the said club shall be eligible for admission as a Member to fill in the vacancy subject to the prior approval of the Managing Committee on payment of an entrance fee of the amount equivalent to 30% of the amount or such other amount payable by an Ordinary Member as may be prescribed by the Managing Committee from time to time. Two aspects will have to be considered on the basis of this provision. Firstly, the member must cease to be member of the Defendant No.1 club in terms of Article 24 and not on account of withdrawal of recommendation by the affiliated club. Secondly, the earlier provision of Article 11 of the regulation of 1974, provided that the vacancy of membership arising from the recommendations of the Clubs as specified in resolution (b) of the preamble to constitution of the Club House Rules, was to be by virtue of demise, resignation or expulsion of such a member. Even if expression "ceases" in Article 19(b) was to be given wide meaning to include resignation, demise,

expulsion as appeared in Article 11 of the regulation of 1974, however, that would not take within its ambit cases of withdrawal of recommendation. Be that as it may, the person to be enrolled as member on recommendation of the Club affiliated to the Bombay Cricket Association is so admitted on payment of entrance fee of the amount equivalent to 30% of the amount or such other amount payable by an Ordinary Member as may be prescribed by the Managing Committee from time to time. The entrance fee which was required to be paid by Founder or Ordinary Member in 1974, when the Plaintiff No.1 was admitted as Member in terms of Article 5(h) or 5(i)(i), was sum of Rs.300/- either in lump sum or in 12 instalments and annual subscription of Rs.50/-. Whereas, if a person was to be admitted as Ordinary Member (not on the recommendation as per Article 5(i)(i) of Regulation of 1974), in that case, he was required to pay Rs.5,000/- as entrance fee and an annual subscription of Rs.200/-. However, after incorporation of the defendant No.1 as a Company, the amount to be paid as entrance fee by Ordinary Member has been specified as Rs.25,000/-. The said amount has now been enhanced to Rs.3,50,000/- in terms of amendment effected in August, 2005. The fact remains that the person who is to be so admitted as Founder Member against any

vacancy will be obliged to pay substantial entrance fee equivalent to 30% of the amount payable by the Ordinary Member (i.e.Rs.1,05,000/-). Viewed thus, prima facie, it is difficult to accept the stand of the defendant No.1 that such Founder Member can be removed at the pleasure of the affiliated club to the Bombay Cricket Association who had recommended its name, in absence of express provision in that behalf.

14. That takes me to the case of plaintiff Nos. 2 and 3. They had applied for being admitted as Ordinary Members being sons of member-plaintiff No.1, in terms of Article 16. Article 16 is already reproduced in earlier part of the order. It is to be noted that it is in two parts. The first part pertains to person directly admitted as Ordinary Member on payment of entrance fee of Rs.25,000/- or more as may be prescribed by the Managing Committee from time to time. The second part pertains to such persons who are sons and daughters of the "members" who can be admitted as Ordinary Members on payment of specified entrance fee. The argument of the appellants that the second part will have to be understood as restricted in its application to the sons and daughters of the ordinary members, does not commend to me. This is so because the expression

used is sons and daughters of the "member" of the club who have been member for a minimum period of eight years and not been declared as defaulter at any time in the past. The expression "member" has been defined in Article 4(e) to mean all categories of members of the "Club". Founder Members is one of the category of membership provided in Article 8. If the expression "member" occurring in the later part of Article 16 is to be given restricted meaning having application to only ordinary member, in that case the sons and daughters of the other category of members provided in Article 8 will stand excluded. In that sense, the plaintiff Nos. 2 and 3 being sons of the plaintiff Nos. 1, who incidently happened to be Founder Member of the Club, were entitled to be admitted as Ordinary Members subject to other restrictions. The plaintiff Nos. 2 and 3 had in fact applied and their application was duly scrutinised and found to be in order by the defendant No.1. The defendant No.1 communicated in writing to plaintiff Nos. 2 and 3 on 30th March, 2000 that their applications have been found to be in order and they are eligible for enrollment as Ordinary Members as and when vacancy was available. They were also informed that they and their family members were entitled to utilise club house facility pending

allotment of membership subject to payment of annual subscription. The Plaintiff Nos. 2 and 3 were also called upon to deposit proportionate amount towards advance entrance fee. It is not in dispute that the plaintiffs paid the requisite amount to the defendant No.1 towards advance entrance fees. However, defendant No.1 in July, 2005 for the first time realised that the sons and daughters of Founder Members were not eligible for Ordinary Membership of the Club. It appears that the defendant No.1 accordingly, sent communication to the concerned persons including plaintiff Nos. 2 and 3, that allotment of permanent wait list numbers given to them stand cancelled with immediate effect and also returned the amount of deposit lying with the defendant No.1. The question is, whether the stand taken by the defendant No.1 that the sons and daughters of Founder Members are not eligible for Ordinary Membership can be accepted. Prima facie, going by the definition of Ordinary Member in Article 16, I am inclined to take the view that even sons and daughters of Founder Members are eligible and entitled to be admitted as Ordinary Members. There is nothing in Article 16 to exclude sons and daughters of Founder Member from being admitted as Ordinary Members. If the argument of the appellant

as canvassed was to be accepted, that would mean that even sons and daughters of other categories of members will not be eligible to be admitted as Ordinary Members. Other categories of Members have been specified in Article 8, namely, Patrons, Vice Patrons, Donor Members and Life Members. Thus understood, the case made out by the defendant No.1 appellant before this court that the plaintiff Nos. 2 and 3 were not entitled to remain on the permanent wait list maintained by the Club cannot be accepted. That stand is not consistent with the provisions contained in Article 16.

15. During the argument one of the issue raised on behalf of the respondents/plaintiffs was that the action of the defendant No.1 appellant was malafide. Certain circumstances, which are appearing from the record were pressed into service to buttress the said submission. Counsel for the appellant however, relied on the decisions of the Apex Court reported in **(2004) 8 SCC 788 in the case of M.P.Special Police Establishment V/s. State of M.P. & Ors. and also (1997) 6 SCC 228 in the case of I.K.Mishra v/s. Union of India & Ors.** to contend that it is not open to allege malafide against the entire managing committee of the Club. The allegation of malafide

necessarily has to be attributed against a person and not collectively. The person who is responsible for happening of particular events as is contended by the plaintiffs will have to be named in the plaint. In absence of such person being party to the suit, allegation of malafide cannot be looked into. However, it is clarified that it will be open to the plaintiffs to take recourse to such course so as to implead the concerned person against whom allegation of malafide is made and can be established. That course will have to be adopted before the Lower Court. All questions in that behalf are kept open. In other words, I am presently not accepting the grievance of the plaintiffs that the action is vitiated on the ground of malafide.

16. During the course of hearing one of the issues raised on behalf of the appellants was that the suit as instituted by the plaintiffs suffers from misjoinder of the causes. Counsel for the plaintiffs/respondents however, has countered this submission and has justly relied on the decision of the Division Bench of the Calcutta High Court reported in **Volume XLV Calcutta Series in the case of Ramendra Nath Roy V/s. Brajendra Nath Dass.** Prima facie, in my opinion, the issues raised by the

plaintiffs against the same Defendant in the present suit are overlapping and inseparable and the cause of action though separate with regard to the plaintiff Nos. 2 and 3 on the one hand and plaintiff No.1 on the other, the suit as instituted cannot be thrown out on this count.

17. Accordingly, I have no hesitation in taking the view that the plaintiffs have made out prima facie case and are entitled for the reliefs as claimed in the Notice of Motion. I have also no hesitation in taking the view that the issue of balance of convenience and issue of irreparable loss will have to be answered in favour of the plaintiffs. The conclusion reached on the relevant issues by the lower Court in that behalf is accepted. In fact, the argument of the appellants was only to question the correctness of the finding and conclusion on the issue of prima facie case made out by the plaintiffs. I have elaborately dealt with that aspect. In any case, the Plaintiff No.1 has been member of the defendant No.1 for last over 30 years. He has been enjoying facilities of the Clubs since then. Defendant No.3 for reasons known to it has withdrawn the recommendation of the plaintiff No.1, to be continued as Founder Member of defendant No.1 Club.

I have already taken the view that the regulations and articles which were applicable at the relevant period do not provide for such authority to the defendant No.3 to recall the recommendation once made. The person who has been so recommended is admitted as member on payment of specified entrance fee as equivalent to that of Ordinary Members. On such admission the member enjoys rights and privileges of members of the Clubs to which Article 21 makes no distinction between the Founder Member and Ordinary Member. It appears that all the members of the Clubs have right to receive notice of all the General Meetings and to attend and vote at such meetings and to contest all elections. It further provides that all members and their family members (wives/husbands, children below the age of twenty one years and unmarried daughters) shall be entitled during the prescribed hours to be admitted to and have the use of the Club to play games and to all other advantages, facilities and amenities and to introduce guests, subject to such restriction and payment as may be imposed or prescribed by the Managing Committee under the Rules, Regulations and Bye-laws for the time being in force. Viewed thus, in my opinion, the plaintiffs/respondents are entitled for relief as has been granted by the Lower

court. No interference in the order that has been passed by the lower court is warranted. The plaintiffs cannot be deprived of said facilities, which they are otherwise entitled to in their own rights subject to other restrictions of the Club. The Plaintiffs will suffer greater hardship and irreparable loss if are deprived of such facilities during the pendency of the suit.

18. Accordingly, these appeals should fail. The same are dismissed with costs.

19. At this stage, counsel for the appellant(s) prays that status quo as was granted earlier by this court be continued for a period of 8 weeks from today, so as to facilitate the appellant to take up the matter in appeal, if they so desire. The request being reasonable one, though it is opposed by the respondents/plaintiffs, I am inclined to accept the same. Accordingly, it is directed that the parties shall maintain status quo as of today for a period of eight weeks.

20. Civil applications also disposed of accordingly.